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POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Notice of Market Dominant Price Adjustment

Docket No. R2018-1

U.S. CHAMBER OF COMMERCE
COMMENTS ON THE UNITED STATES POSTAL SERVICE
NOTICE OF MARKET-DOMINANT PRICE ADJUSTMENT
(October 26, 2017)

Pursuant to the Commission's Order No. 4153 (Oct. 10, 2017), the U.S. Chamber of Commerce (Chamber) — the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations — respectfully submits the following comments with respect to the rates which the United States Postal Service (USPS) is proposing for market dominant products in 2018. This submission is a follow-up to our request for additional disclosure that was filed on October 16, 2017.

1 Summary of comment

With the extraordinary rise of e-commerce in the last few years, especially the rise in international e-commerce, it has become apparent that the "terminal dues" system of the Universal Postal Union (UPU) has become too distorting to competition.[1] As a result, in implementing the "terminal dues" system of the UPU, USPS is inadvertently discriminating against American merchants and American private carriers in favor of foreign merchants and foreign post offices. A recent economic study for the Commission suggests that USPS, too, is substantially and negatively affected by the

[1] The Chamber in these comments takes issue with the "terminal dues" system of the Universal Postal Union, not necessarily the U.S. involvement in the organization.

UPU terminal dues system.[2] In short, American businesses lose, USPS ratepayers lose, and even USPS loses. Two decades after the UPU formally accepted the need to introduce "country-specific" terminal dues,[3] this unpalatable prospect for 2018 is unreasonable and unacceptable. It also appears to be contrary to U.S. postal law. The time has come for the Commission to end this inexplicable preference for foreign mail and packages and unacceptable distortion that unfairly subsidizes foreign retailers who wish to sell merchandise to U.S. consumers.

As far as commercial relations are concerned, the main culprit is the rate schedule for delivery of "small packets," goods weighing up to 4.4 pounds (2 kg) or more[4] which are imported into the United States via the terminal dues system established by the UPU. Small packet service provides the gateway to U.S. consumers which foreign e-commerce merchants use to compete with American retailers, both online and traditional. USPS's rates for delivery of inbound small packets are included in the rates for Inbound Letter Post which USPS is proposing in this case. The Chamber submits that these proposed rates are unreasonably discriminatory and therefore unlawful under 39 U.S.C. § 403(c) (2012 & Supp. III, 2015). Specifically, the rates for Inbound Letter Post make an "undue or unreasonable discrimination among users of the mails" and grant "undue or unreasonable preferences" by providing foreign post offices and foreign mailers, as opposed to American carriers and American mailers, substantially different rates for the delivery of small packets.

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[2] *See* Copenhagen Economics. "Terminal Dues: Impact on financial transfers among designated postal operators of the Universal Postal Union 2018-2021 cycle agreements" (Sep. 22, 2017). https://www.prc.gov/sites/default/files/reports/Terminal%20Dues_Impact%20on%20financial%20transfers_FINAL%2022%20September%202017.pdf. This study concludes that the UPU terminal dues system implies that the countries in North America (U.S. and Canada) will collectively suffer a negative "net financial transfer" due to the UPU terminal dues system of about SDR 1 billion (about $ 1.4 billion).

[3] *See* UPU Convention (1999), art. 47(3) ("The provisions of the present Convention concerning the payment of terminal dues are transitional arrangements, moving towards a country-specific payment system").

[4] The weight limit for small packets may be increased to 11 pounds (5 kg) by bilateral agreement between USPS and a foreign post office. See UPU, Convention Regulations (2016), art. 17-103(2)(1) ("Letters and small packets may weigh up to 5 kilogrammes in relations between designated operators where both admit such items from their customers").

The proposed rates for Inbound Letter Post are not rates which USPS is obliged to charge under the 2016 Universal Postal Convention (UPU Convention). The 2016 UPU Convention, which the U.S. has not certified, is not binding on the United States government or USPS either as a matter of U.S. law or international law. Motion to Unseal at 3. Without the U.S. being subject to a binding international agreement, what is binding on USPS, and on this Commission, is U.S. postal law.

The total value of the proposed rate preferences for delivery of Inbound Letter Post is not insubstantial to this proceeding. It appears not implausible that most of the proposed rate increase for market dominant First Class Mail products in 2018 can be attributed to the rate preferences which USPS proposes to grant foreign post offices and foreign mailers for the delivery of the Inbound Letter Post, and specifically, for the delivery of inbound small packets.

In principle, as required by U.S. law, American mailers and foreign mailers should pay similar rates for similar services. Accordingly, the Chamber urges the Commission, absent a binding international agreement which the U.S. has certified, to direct USPS to resolve the unreasonable preferences for foreign post offices and foreign mailers implied by the proposed rates for delivery of Inbound Letter Post, particularly the rates for delivery of inbound small packets.

2 The proposed rates for Inbound Letter Post are unreasonably discriminatory in violation of § 403(c).

The proposed rates, UPU "terminal dues," are shown in Table 1.[5] The final rates will be adjusted somewhat depending on the quality of service achieved by USPS in 2018. The final terminal dues for 2018 will be published by the UPU in mid-2019.

[5] USPS's "Notice of Market Dominant Price Adjustment" at 10 (Oct. 6, 2017) (Notice) does not specify the rates being proposed other than to indicate that they are the rates "resulting from the Universal Postal Convention." In the UPU Convention, terminal dues are specified in Special Drawing Rights, a basket of currencies defined by the International Monetary Fund. Based on the UPU's past practice, the exchange rate for 2018 terminal dues is likely to be the rate on June 1, 2017, when one SDR equaled $1.384780.

Table 1. USPS terminal dues rates for Inbound Letter Post, 2018

Rate schedule	Letter post coming from	Volume of letter post per year[1]	Proposed delivery rates, 2018
Group I	39 industrialized countries	> 50 tonne < 50 tonne	Documents: \$ 3.58/kg + \$ 0.46/item Small packets: \$ 2.19/kg + \$ 0.98/item Letter post: \$ 9.02/kg
Group II	27 High-level developing countries (including Hong Kong, Singapore)	> 50 tonne < 50 tonne	Documents: \$ 2.86/kg + \$ 0.37/item Small packets: \$ 1.82/kg + \$ 0.81/item Letter post: \$ 7.32/kg
Group III	39 Mid-level developing countries (including China)	>75 tonne < 75 tonne	Documents: \$ 2.54/kg + \$ 0.32/item Small packets: \$ 1.66/kg + \$ 0.74/item Letter post: \$ 6.58/kg
Group IV	94 Low-level developing countries (including India)	> 75 tonne[2] < 75 tonne[2]	Documents: \$ 2.46/kg + \$ 0.31/item Small packets: \$ 1.51/kg + \$ 0.67/item Letter post: \$ 6.19/kg

Source: Universal Postal Convention (2016), arts. 28-30. Special Drawing Rights converted to US dollars at 1 SDR = \$ 1.384780 (Jun. 1, 2017).

[1] A "tonne" (metric ton) = 2,205 pounds.

[2] USPS may invoke the over 75 tonne rate for the inbound flow from a country in Group 4 only if that country first invokes the rate for the USPS outbound flow to that country.

As Table 1 indicates, the rates for proposed for Inbound Letter Post actually include 12 rate schedules. Terminal dues vary according to which of four country groups the origin country belongs. Group 1 includes 24 industrialized countries, including Western Europe, Israel, the U.S. and Canada, Japan, and Australia and New Zealand. Group 2 includes relatively advanced developing countries such as Hong Kong (treated as a separate country from China by the UPU), Singapore, Korea, and Poland. Group 3 includes less advanced developing countries, including China, Thailand, Malaysia, Mexico, Brazil, and Russia. Group 4 includes the least advanced developing countries, including potentially important commercial countries such as India, Egypt, and Vietnam. In addition, for letter post received from each group of countries, there are two rate schedules depending on the total volume of letter post received by USPS. For letter post received from countries in Groups 1 and 2, terminal dues are assessed using a *kg-item formula* (i.e., a formula that depends on both the total weight and the number of items in a given mail flow) unless the volume is less than 50 tonnes (a metric tonne equals 2205 pounds) per year, in which case terminal dues are assessed according to a *kg-only formula* (i.e., a formula that depends only on the total weight in a given mail flow). For letter post received from a country in Group 3, the threshold for changing from kg-item rates to kg-only rates is 75 tonnes per year. For letter post received from a country in Group 4, the terminal dues is almost always assessed under a kg-only rate although a kg-item rates exist in principle. Finally, in each group, there are different kg-item formula for documents (essentially, information recorded on paper) and small packets (goods). Where kg-item terminal dues are applied, the same rate applies to all letter post items.

In U.S. postal terminology, terminal dues are "downstream" rates for the delivery of international mail. Terminal dues represent charges for the local delivery of Inbound Letter Post, not the "upstream" collection and transportation to the destination post office or sorting center.[6] Costs of collection and long distance transportation of Inbound Letter Post are borne by the foreign post office.[7] Terminal dues, therefore, correspond to only a portion of USPS's retail domestic rates. According to the UPU, terminal dues should be equivalent to approximately 70 percent of the normal retail postage rates.[8]

In sum, according the policy premises of the UPU USPS should set Inbound Letter Post rates equal to approximately 70 percent of the corresponding domestic First Class Mail or Priority Mail postage rates proposed for 2018 in order to ensure that foreign mailers are charged the same as American domestic mailers for the same local delivery service,. The two sets of rates may be calculated from the terminal dues

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[6] In the examples cited and the discussion throughout this submission the Chamber is arguing that postal rates should be established so that American mailers and foreign mailers should pay similar rates for similar services.

[7] The foreign post office pays USPS a separate UPU charge, air conveyance dues, to compensate USPS for long distance transportation within the United States.

[8] One may reasonably question whether 70 percent is the correct percentage of retail domestic postage in order to determine how terminal dues compare to "equivalent domestic postage." Some have suggested that terminal dues should be set as high as 100 percent or as low as 60 percent of domestic postage. However, if rates for the delivery of inbound letter post are also made available to U.S. domestic mailers on a non-discriminatory basis, the precise percentage of domestic postage that is equivalent to terminal dues will not matter. USPS will have a strong incentive to ensure that rates for delivery of inbound letter post do not provide an unreasonable preference for foreign mail.

provisions of the 2016 UPU Convention and from the domestic First Class Mail rates proposed in the current proceeding and the domestic Priority Mail rates proposed in Docket CP2018-8.[9]

Appendix A is a detailed table specifying (1) rates derived from 70 percent of the proposed domestic postage for 2018 and (2) the terminal dues rates set out the 2016 UPU Convention for each weight step from 1 to 70 ounces, i.e., 4 pounds, 6 ounces or approximately 2 kg. For weight steps above 13 ounces, the Priority Mail rates for local delivery (zones 1 and 2) are used. Separate terminal dues schedules are shown for letter post mail received from each of the four terminal dues groups and according to both the kg-item and kg-only formula. There are also separate terminal dues schedules for documents and small packets.[10] Two examples may help to clarify this appendix.

- *A 2-ounce document.* In this proceeding, USPS is proposing a First Class Mail rate of $ 0.71 for a domestic letter weighing between one and two ounces. Seventy percent of $ 0.71 is $ 0.50. In principle, then, the Inbound Letter Post rate for a 2-oz letter should be about $ 0.50 if it is to reflect equivalent domestic postage. The proposed domestic First Class Mail rate for a 2-oz flat is $ 1.21. The corresponding Inbound Letter Post rate should therefore be about $ 0.85 (70 percent of $ 1.21). In fact, the terminal dues rate for any document, whether letter or flat, in the 2-ounce weight step varies from $ 0.35 to $ 0.66 depending upon the group in which the origin country falls and whether the inbound flow from that country is more or less than the threshold for the kg-only rate.

- *A 1.5-pound small packet.* In Docket CP2018-8, USPS is proposing a Priority Mail rate of $ 7.25 for a package weighing between one and two pounds and

[9] *See* Docket CP2018-8, Competitive Products Price Changes Rates Of General Applicability, USPS, "Notice of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision Nos. 16-8 and 16-10" (Oct. 6, 2017)

[10] Appendix A only presents the UPU terminal dues rates for documents up to 13 oz., the weight limit for documents (letters and flats) in domestic First Class Mail. Technically, terminal dues rates theoretically available for documents weighing up to 0.5 kg (1.1 pound) provided they fit within the UPU's size limits for envelopes.

delivered locally. The Inbound Letter Post for a small packet weighing 1.5 pounds, i.e., between 24 and 25 ounces, should be about $ 5.08 to be aligned with domestic postage. In fact, the terminal dues rates for a 25-ounce small packet is between $ 1.74 and $ 6.39, depending on the terminal dues group of the origin country and whether the total annual flow is above or below the kg-only rate threshold.

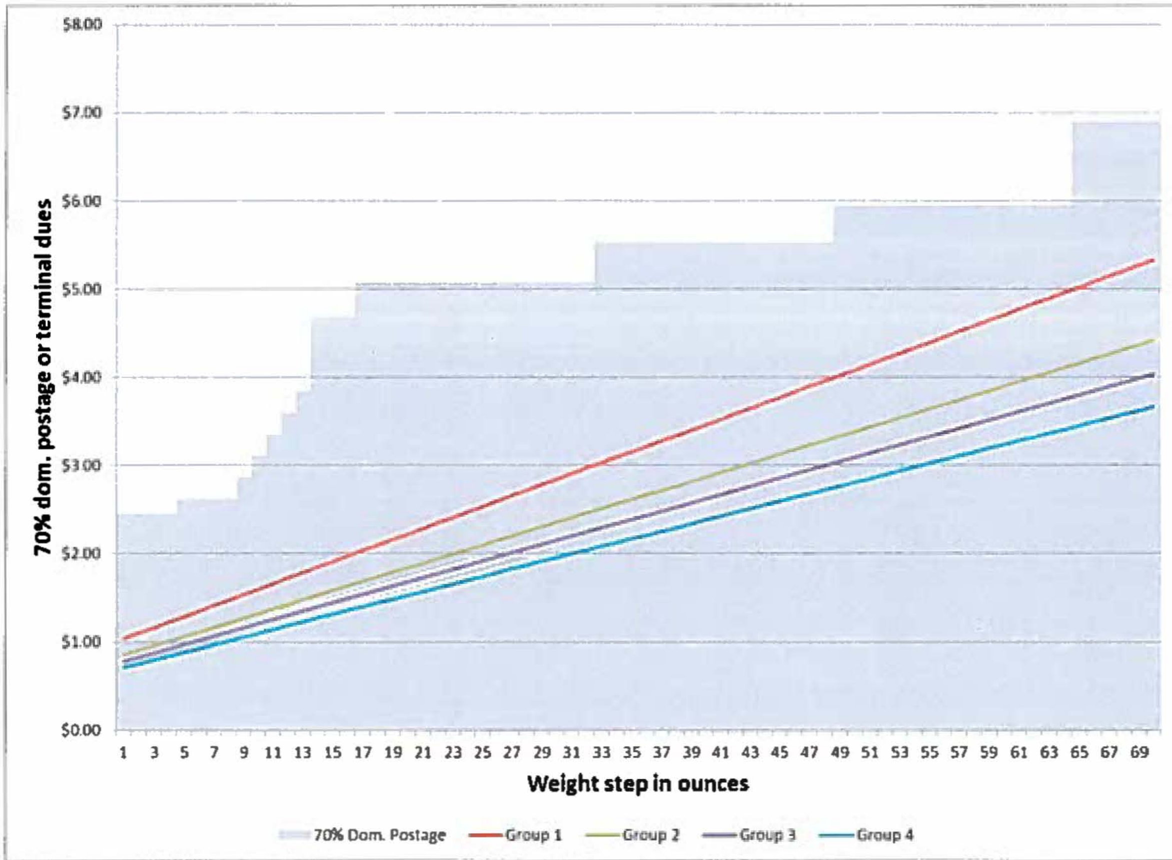
Appendix B shows, for each weight step and each terminal dues schedule, the extent to which the terminal dues rate represents a discount from the equivalent domestic postage rate (70 percent of the retail rate). In some weight steps, the terminal dues charge implies a negative discount, i.e., an overcharge compared to equivalent domestic postage. For example, 2-ounce letter received from Germany, a high volume Group 1 country, is assessed a terminal dues charge of $ 0.66 instead of the equivalent domestic postage of $ 0.50, an overcharge of 33 percent. A 25-ounce small packet received from China, a high-volume Group 3 country, will be assessed a terminal dues charge of $ 1.91 instead of the equivalent domestic postage of $ 5.08, a discount of about 62 percent.

It is apparent from Appendices A and B that the proposed rates for delivery of Inbound Letter Post are pervasively discriminatory. Charges for the delivery of documents and small packets vary wildly depending on the terminal dues group of the mailer's country and whether kg-item formula or the kg-only formula is applied. There is no apparent basis for these price differences. It would seem to cost USPS exactly the same to provide local delivery for otherwise identical documents and packages regardless of whether they are tendered by (1) American mailers, (2) foreign post offices, or (3) private carriers.

The primary concern of the Chamber is the extent to which the proposed Inbound Letter Post rates affect U.S. businesses. Our focus, necessarily, is on the rates for delivery of inbound small packets. International small packet service has evolved into a commercial service developed by post offices to serve the e-commerce market. The UPU is aggressively improving international small packet service to defend post offices from competition by private carriers in the upstream portion of the international small packet market — that is, collection of small packets in the origin country and transportation to the post office in the country of destination. Most (not all) of companies whom the UPU regards as competitors of the international postal system are American. Still more important is competition at the merchant mailer level. Foreign e-commerce merchants are mounting a strong competitive threat against US online merchants and traditional brick and mortar retailers. The comments filed with the Commission in Docket IM2016-1 represent the tip of the iceberg. Virtually everyone knows of cases in which similar items can be purchased on the internet from abroad more cheaply than from a US merchant. To the extent that foreign post offices and foreign merchants can successfully compete against US companies on the basis of greater efficiencies or improved operations, there can be no objection. But the Chamber must object to USPS rates for the delivery of inbound small packets that tilt the playing field by discriminating against American merchants and American private carriers.

Figure 1 provides a graphical summary of the rates for small packets set out in Appendix A, i.e., the terminal dues rates for delivery of inbound small packets and the equivalent domestic postage rates (70 percent of the retail First Class Mail or Priority Mail rates). The terminal dues rates shown are the kg-item rates which apply to large bilateral letter post flows into the United States (i.e., from countries sending the U.S. more than 50 or 75 tonnes of letter post per year). As this graph makes clear, the "terminal dues discounts" — the differences between terminal dues charges for delivery of foreign small packets and equivalent domestic postage rates for delivery of domestic small packets — are substantial and apply to all weight steps from 0 to 70 ounces. The "terminal dues discounts" for small packets received from Germany, the U.K., Japan, and other large volume industrialized countries (Group 1) range from 17 to 61 percent depending on the weight step; the average discount across all weight steps is 40 percent. For small packets imported from Group 2 countries such as Hong Kong, Korea, and Singapore the proposed discounts are between 31 and 67 percent, with an average of 50 percent. The proposed discounts for small packets imported from China and other large volume Group 3 countries are 37 to 70 percent, averaging 54 percent across all weight steps.

Figure 1. 70% domestic postage v. kg-item terminal dues, 2018



The Commission has long experience in enforcing statutory prohibitions against "undue or unreasonable discrimination among users of the mails" and "undue or unreasonable preferences." The Commission's analysis has, in turn, been guided by the court's seminal decision in *National Easter Seal Society v. USPS*, 656 F.2d 754 (D.C. Cir. 1981). There is no need to recount this history here,[11] but it may be useful to recall one precedent to highlight the relative scale of the infirmities in the proposed rates for inbound small packets. In Docket R2015-4, a review of USPS's proposed market dominant product rates for 2016, the Commission addressed unequal discounts for nonprofit and commercial mail tendered. The rates in question involved downstream

[11] For an excellent summary of the implementation of § 403(c), see Docket No. R2015-4, Notice of Market Dominant Price Adjustment, "Comments of Alliance of Nonprofit Mailers" (Feb. 19, 2015).

services like the Inbound Letter Post rates in this case. The difference in the discounts provided for nonprofit and commercial mail was, in one example highlighted by the Commission, the difference between \$ 0.034 and \$ 0.035, or one-tenth of a cent. [12] In that case, neither the nonprofit and commercial mailers nor their customers were competing against each other, so the rate preferences had no significant effect on competition. The issue was limited to whether it was reasonable for USPS to provide different discounts for mailers who tendered the mail with similar levels of work-sharing.

In contrast, in the present proceeding, differences in the proposed rates for delivery of inbound small packets and delivery of similar domestic small packets are greater by orders of magnitude. Indeed, the differences between the rates for different foreign post offices are far greater than in R2015-4. Moreover, the rate preferences granted to foreign postal operators and their customers directly and adversely affect both the American private carriers that compete against foreign post offices in the upstream portion of the international small packet market and, more fundamentally, the American e-commerce and traditional merchants that compete against foreign e-commerce merchants. The deviation from reasoned and reasonable levels of price differences appear much greater in the present proceeding than in R2015-4.

In the R2015-4 proceeding, the Commission directed USPS to "resolve the disparity between commercial and nonprofit presort discounts." In the present proceeding, the Chamber urges the Commission to direct USPS to resolve the much wider disparity between the rates for delivery of inbound small packets and the equivalent domestic postage rates. It should be noted, however, that an elaborate economic analysis of the concept of "equivalent domestic postage" is unnecessary to achieve reasonable parity. It makes no difference whether the "correct" percentage of retail domestic postage to approximate equivalent domestic postage is 60 percent, 70 percent (as the UPU claims), 80 percent, or a 100 percent. If the rates for delivery of inbound small packets are made available to American mailers on the same terms as a domestic service, USPS will automatically ensure that rates for foreign mailers do not

[12] Docket No. R2015-4, Notice of Market Dominant Price Adjustment, Order No. 2378 at 7 (Mar. 6, 2015).

undercut domestic rates for American mailers to avoid diverting First Class Mail and Priority Mail into the inbound small packet product.

3 The Commission should also take into account additional legal issues presented by the proposed rates for inbound small packets.

The apparently unreasonable preferences for foreign post offices and foreign mailers represent the most fundamental legal issue posed by the proposed rates for Inbound Letter Post, but this issue does not arise in legal isolation. What constitutes an "unreasonable" preference should be considered in light of the other provisions of title 39. In particular, it seems evident that the UPU terminal dues system is inconsistent with the national policies on international postal and other delivery services set out in § 407(a). Indeed, UPU terminal dues are difficult to reconcile with the national postal policies set out in § 101, in particular with the policy that the costs of all postal operations must be apportioned to all users of the mail on a fair and equitable basis. In addition, insofar as the proposed rates are rates of USPS (an issue addressed in the next section), the proposed rates for Inbound Letter Post must pass muster under the multiple objectives and factors set out in § 3622. The apparent inconsistencies between the criteria of § 3622 and the UPU terminal dues system have already been noted by two Commissioners in the course of the Commission's § 407(c) review of the rates and classifications for market dominant products to be included in the 2016 UPU Convention. Then, too, the proposed rates appear to raise questions under § 404a(a)(1), which prohibits USPS from adopting a rule "the effect of which is to preclude competition or establish the terms of competition unless the Postal Service demonstrates that the regulation does not create an unfair competitive advantage for itself or any entity funded (in whole or in part) by the Postal Service." Indeed, even beyond, but cross-referenced in, title 39, the Commission should not overlook the fundamental principles of US antitrust and trade law. 39 USC section 409(e).

4 The proposed Inbound Letter Post rates are proposed by USPS, not outside the control of USPS.

In its Notice, USPS states that, "The Inbound Letter Post price increase . . . is a consequence of changes on terminal dues resulting from the Universal Postal Convention. These changes are outside the Postal Service's control."[13] These statements do not appear to be correct as a matter of law.

When the rates proposed in the present proceeding become effective in early 2016, the 2016 UPU Convention will be in force. However, the United States will not be a party to this Convention and bound to implement its provisions, unless the Secretary of State (or his direct designee) has formally approved the Convention and submitted instruments of approval to the UPU. This is the procedure required by US law[14] and the UPU Constitution.[15] To date the Secretary of State has not approved the 2016 UPU Convention and there is no certainty regarding when or if he will do so. Even if the Secretary of State were to formally approve the 2016 UPU Convention, it is not clear that the UPU Convention, a Congressional-Executive agreement, can be interpreted as overriding an existing statutory provision such as § 403(c). A Congressional-Executive agreement "draws its authority from the joint powers of the President and Congress," and therefore "Congressional authorization to make an executive agreement that would supersede federal law is not be inferred lightly."[16] Even if the United States becomes a party of the 2016 UPU Convention and the Convention is deemed to supersede inconsistent federal statutes, the United States would only be obliged to implement the

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[13] USPS, "Notice of Market Dominant Price Adjustment" at 10 (Oct. 6, 2017).

[14] *See* 1 USC. § 112b(c) (2012 & Supp. IV 2016) ("Notwithstanding any other provision of law, an international agreement may not be signed or otherwise concluded on behalf of the United States without prior consultation with the Secretary of State. Such consultation may encompass a class of agreements rather than a particular agreement"). *See also* Negotiation, Conclusion, and Termination of Treaties and Other International Agreements, 73 Fed. Reg. 19133 (Apr. 8, 2008).

[15] *See* Constitution of the Universal Postal Union (as amended through the Ninth Additional Protocol, 2016), arts. 25, 26. This document is included in UPU, *Decisions of the 2016 Istanbul Congress* (2017). http://www.upu.int/uploads/tx_sbdownloader/actsLastCongressActsEn.pdf.

[16] *Restatement (Third) of the Foreign Relations Law of the United States* § 115(3) and comment (c).

provisions of the Convention in exchanges of mail with other parties to the Convention. Historically, very few of the UPU's 192 member countries actually become parties to the Convention by formal approval or accession.[17] As a matter of law, the UPU Convention appears to be primarily an agreement between post offices and not a binding intergovernmental agreement among governments. The Postal Accountability and Enhancement Act of 2006 (PAEA) permits the USPS to enter into commercial contracts related to international postal services, "except that (1) any such contract made with an agency of a foreign government...shall be solely contractual in nature and may not purport to be international law;" 39 USC 407 (d)(1).

5 Implications for the price cap on market dominant First Class Mail

The statutory price cap applies to all market dominant First Class Mail products collectively. USPS is proposing to raise market dominant First Class Mail rates by almost the limit permitted by the cap. This means that increased revenues from one First Class Mail product will necessitate smaller rate increases in other First Class Mail products. The extent of that effect due to the proposed terminal dues is therefore quite relevant to the pending market dominant rate cap proceedings. If the public is to understand the numbers behind the market dominant rate cap discussion, then transparency into the proposed terminal dues rates is absolutely essential. In its decision whether to unseal or not the proposed terminal dues rates, the Commission must take this connection with the rate cap into "the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets." 39 USC 504(g)(3)(A) Despite the classification of the terminal dues rates as market dominant, again there is no doubt that these products compete with the private sector. USPS projects that the proposed rates for 2018 will increase

[17] [17] As of September 1, 2018, it appears that only 33 out of 192 member countries have formally approved the 2012 UPU Convention. *See* UPU, "List of member countries of the Universal Postal Union Indicating their contribution class, geographical group and legal situation with regard to the Acts of the Union: Position at 1 September 2017." http://www.upu.int/uploads/tx_sbdownloader/actMemberCountriesLegalSituationEn.pdf.

revenues from market dominant First Class Mail products by $501 million. The projected revenues from the Inbound Letter Post product in 2018 is $408 million.[18] It seems clear that the rates for Inbound Letter Post are substantially below the equivalent domestic postage rates charged American mailers for similar services. Because so little information about international postal service is publicly available, it is impossible to estimate how much more revenue would be earned from the Inbound Letter Post product if rates were raised to the level of equivalent domestic postage. However, since the overall level of discounts appears to approach 50 percent or more, it is not implausible that additional revenue could amount to a significant fraction of, and perhaps a majority, of the total additional revenue to be earned from market dominant First Class Mail. Put differently, it appears not implausible that most of the proposed rate increase for market dominant First Class Mail products in 2018 can be attributed to rate preferences which USPS proposes to grant foreign post offices and foreign mailers for the delivery of the Inbound Letter Post, and specifically, for the delivery of inbound small packets. The Public Interest Balancing Test for the Decision to Unseal or Not Must Take Into Account Whether the Proposed Terminal Dues Are Lawful

If the proposed terminal dues rates are unlawful because they violate PAEA's prohibitions against discriminatory rates, among other prohibitions enumerated above, then unsealing the proposed terminal dues rates will cause no commercial injury because these rates will never come into effect. The evaluation of the lawfulness of terminal dues is likely, but not necessarily, dependent on whether there is international law sufficiently intact and binding on the United States to override these prohibitions in PAEA.

Conclusions

In the present proceeding, the rates proposed for delivery of Inbound Letter Post provide foreign post offices and foreign mailers substantial rate preferences when

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[18] USPS, Library Reference USPS-LR-R2018-1-1, CAPCALC-FCM-R2018-1.xlsx, tabs "Percent Change Summary" and "FCMI International."

compared to the rates proposed for similar domestic services. The Chamber is particularly concerned about the large rate preferences for delivery of inbound small packets, because international small packet service is the fastest growing main conduit for the booming international e-commerce market. The proposed rate preferences for inbound small packets will result in substantial competitive disadvantages for American merchants who are competing with foreign online merchants and for American private carriers who are competing with foreign post offices in the upstream portion of the international mail market. Since there appears to be no reasonable justification for these rate preferences for foreign post offices and foreign commercial mailers, they must be considered as unlawful under 39 U.S.C. § 403(c), as well as under several other provisions of PAEA, especially in light of the absence of any UPU Convention that is binding on the United States. Moreover, the unreasonableness of these rate preferences is still more apparent when one considers the broader objectives and requirements of title 39 and U.S. commercial law generally.

Although USPS has asserted that the rates for delivery of Inbound Letter Post are outside of its control, the Chamber is not aware of an apparent basis for this assertion in U.S. or international law. The legal basis for the proposed rates for delivery of Inbound Letter Post appears no different from the legal basis for the other rates proposed in this proceeding in the absence of a binding Convention.

The total value of the rate preferences implied by the rates for inbound small packets appears to be significant. Undercharges for delivery of inbound small packets appear to account for a substantial proportion, perhaps the majority, of the proposed rate increases for market dominant First Class Mail products as a whole. The absence of transparency into the proposed terminal dues rates would consequently obscure the public's insight into the pending market dominant rate cap proceedings. This and the question whether the proposed terminal dues rates are even lawful in the absence of binding international law, as against the postal law's clear prohibitions against discriminatory rates, are two considerations that the Commission should include in their assessment of "the public interest in maintaining the financial transparency of a government entity competing in commercial markets."

The Chamber proposes that the Commission direct USPS to resolve the unreasonable preferences for foreign post offices and foreign mailers implied by the proposed rates for delivery of Inbound Letter Post, particularly the rates for delivery of inbound small packets. To ensure the elimination of such preferences, the Commission should also require USPS to make rates for delivery of inbound small packets for foreign mailers on the same terms as provided to domestic mailers.

Respectfully submitted,

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Appendix A

70% of First Class/Priority Mail Rates v. Inbound Letter Post Rates

Weight step (oz)	70% domestic postage	Per kg and per item rates Group 1	Group 2	Group 3	Group 4	Per kg rates Group 1	Group 2	Group 3	Group 4
Inbound Letter Post Documents v. First Class Mail Letters									
1	$ 0.35	$ 0.56	$ 0.45	$ 0.40	$ 0.38	$ 0.26	$ 0.21	$ 0.19	$ 0.18
2	0.50	0.66	0.53	0.47	0.45	0.51	0.42	0.37	0.35
3	0.64	0.76	0.61	0.54	0.52	0.77	0.62	0.56	0.53
3.5	0.79	0.81	0.65	0.58	0.56	0.89	0.73	0.65	0.61
Inbound Letter Post Documents v. First Class Mail Flats									
1	$ 0.70	$ 0.56	$ 0.45	$ 0.40	$ 0.38	$ 0.26	$ 0.21	$ 0.19	$ 0.18
2	0.85	0.66	0.53	0.47	0.45	0.51	0.42	0.37	0.35
3	0.99	0.76	0.61	0.54	0.52	0.77	0.62	0.56	0.53
4	1.14	0.86	0.69	0.61	0.59	1.02	0.83	0.75	0.70
5	1.29	0.97	0.77	0.68	0.66	1.28	1.04	0.93	0.88
6	1.44	1.07	0.85	0.76	0.73	1.53	1.25	1.12	1.05
7	1.58	1.17	0.93	0.83	0.80	1.79	1.45	1.31	1.23
8	1.73	1.27	1.01	0.90	0.87	2.05	1.66	1.49	1.40
9	1.88	1.37	1.09	0.97	0.94	2.30	1.87	1.68	1.58
10	2.02	1.47	1.18	1.04	1.01	2.56	2.08	1.87	1.76
11	2.17	1.57	1.26	1.11	1.08	2.81	2.28	2.05	1.93
12	2.32	1.68	1.34	1.19	1.15	3.07	2.49	2.24	2.11
13	2.46	1.78	1.42	1.26	1.22	3.32	2.70	2.43	2.28
Inbound Letter Post Small Packets v. First Class Mail Packages/Priority Mail (zone 1-2)									
1	$ 2.45	$ 1.04	$ 0.86	$ 0.79	$ 0.71	$ 0.26	$ 0.21	$ 0.19	$ 0.18
2	2.45	1.10	0.91	0.83	0.76	0.51	0.42	0.37	0.35
3	2.45	1.16	0.96	0.88	0.80	0.77	0.62	0.56	0.53
4	2.45	1.23	1.01	0.93	0.84	1.02	0.83	0.75	0.70
5	2.63	1.29	1.07	0.97	0.89	1.28	1.04	0.93	0.88
6	2.63	1.35	1.12	1.02	0.93	1.53	1.25	1.12	1.05
7	2.63	1.41	1.17	1.07	0.97	1.79	1.45	1.31	1.23
8	2.63	1.47	1.22	1.11	1.01	2.05	1.66	1.49	1.40
9	2.87	1.54	1.27	1.16	1.06	2.30	1.87	1.68	1.58
10	3.12	1.60	1.32	1.21	1.10	2.56	2.08	1.87	1.76
11	3.36	1.66	1.38	1.26	1.14	2.81	2.28	2.05	1.93
12	3.61	1.72	1.43	1.30	1.18	3.07	2.49	2.24	2.11
13	3.85	1.78	1.48	1.35	1.23	3.32	2.70	2.43	2.28
14	4.69	1.85	1.53	1.40	1.27	3.58	2.91	2.61	2.46
15	4.69	1.91	1.58	1.44	1.31	3.84	3.11	2.80	2.63
16	4.69	1.97	1.63	1.49	1.36	4.09	3.32	2.99	2.81
17	5.08	2.03	1.68	1.54	1.40	4.35	3.53	3.17	2.98
18	5.08	2.10	1.74	1.58	1.44	4.60	3.74	3.36	3.16
19	5.08	2.16	1.79	1.63	1.48	4.86	3.95	3.55	3.34
20	5.08	2.22	1.84	1.68	1.53	5.11	4.15	3.73	3.51
21	5.08	2.28	1.89	1.73	1.57	5.37	4.36	3.92	3.69
22	5.08	2.34	1.94	1.77	1.61	5.63	4.57	4.11	3.86
23	5.08	2.41	1.99	1.82	1.65	5.88	4.78	4.29	4.04
24	5.08	2.47	2.05	1.87	1.70	6.14	4.98	4.48	4.21
25	5.08	2.53	2.10	1.91	1.74	6.39	5.19	4.66	4.39

70% of First Class/Priority Mail Rates v. Inbound Letter Post Rates

Weight step (oz)	70% domestic postage	Per kg and per item rates Group 1	Per kg and per item rates Group 2	Per kg and per item rates Group 3	Per kg and per item rates Group 4	Per kg rates Group 1	Per kg rates Group 2	Per kg rates Group 3	Per kg rates Group 4
Inbound Letter Post Small Packets v. First Class Mail Packages/Priority Mail (zone 1-2)									
26	$ 5.08	$ 2.59	$ 2.15	$ 1.96	$ 1.78	$ 6.65	$ 5.40	$ 4.85	$ 4.56
27	5.08	2.66	2.20	2.01	1.83	6.90	5.61	5.04	4.74
28	5.08	2.72	2.25	2.05	1.87	7.16	5.81	5.22	4.92
29	5.08	2.78	2.30	2.10	1.91	7.41	6.02	5.41	5.09
30	5.08	2.84	2.36	2.15	1.95	7.67	6.23	5.60	5.27
31	5.08	2.90	2.41	2.20	2.00	7.93	6.44	5.78	5.44
32	5.08	2.97	2.46	2.24	2.04	8.18	6.64	5.97	5.62
33	5.53	3.03	2.51	2.29	2.08	8.44	6.85	6.16	5.79
34	5.53	3.09	2.56	2.34	2.13	8.69	7.06	6.34	5.97
35	5.53	3.15	2.61	2.38	2.17	8.95	7.27	6.53	6.14
36	5.53	3.21	2.66	2.43	2.21	9.20	7.47	6.72	6.32
37	5.53	3.28	2.72	2.48	2.25	9.46	7.68	6.90	6.50
38	5.53	3.34	2.77	2.53	2.30	9.72	7.89	7.09	6.67
39	5.53	3.40	2.82	2.57	2.34	9.97	8.10	7.28	6.85
40	5.53	3.46	2.87	2.62	2.38	10.23	8.31	7.46	7.02
41	5.53	3.53	2.92	2.67	2.42	10.48	8.51	7.65	7.20
42	5.53	3.59	2.97	2.71	2.47	10.74	8.72	7.84	7.37
43	5.53	3.65	3.03	2.76	2.51	10.99	8.93	8.02	7.55
44	5.53	3.71	3.08	2.81	2.55	11.25	9.14	8.21	7.72
45	5.53	3.77	3.13	2.85	2.60	11.51	9.34	8.40	7.90
46	5.53	3.84	3.18	2.90	2.64	11.76	9.55	8.58	8.08
47	5.53	3.90	3.23	2.95	2.68	12.02	9.76	8.77	8.25
48	5.53	3.96	3.28	3.00	2.72	12.27	9.97	8.96	8.43
49	5.95	4.02	3.33	3.04	2.77	12.53	10.17	9.14	8.60
50	5.95	4.09	3.39	3.09	2.81	12.78	10.38	9.33	8.78
51	5.95	4.15	3.44	3.14	2.85	13.04	10.59	9.52	8.95
52	5.95	4.21	3.49	3.18	2.89	13.30	10.80	9.70	9.13
53	5.95	4.27	3.54	3.23	2.94	13.55	11.00	9.89	9.30
54	5.95	4.33	3.59	3.28	2.98	13.81	11.21	10.08	9.48
55	5.95	4.40	3.64	3.32	3.02	14.06	11.42	10.26	9.66
56	5.95	4.46	3.70	3.37	3.07	14.32	11.63	10.45	9.83
57	5.95	4.52	3.75	3.42	3.11	14.57	11.84	10.64	10.01
58	5.95	4.58	3.80	3.47	3.15	14.83	12.04	10.82	10.18
59	5.95	4.65	3.85	3.51	3.19	15.09	12.25	11.01	10.36
60	5.95	4.71	3.90	3.56	3.24	15.34	12.46	11.20	10.53
61	5.95	4.77	3.95	3.61	3.28	15.60	12.67	11.38	10.71
62	5.95	4.83	4.00	3.65	3.32	15.85	12.87	11.57	10.88
63	5.95	4.89	4.06	3.70	3.36	16.11	13.08	11.76	11.06
64	5.95	4.96	4.11	3.75	3.41	16.36	13.29	11.94	11.24
65	6.90	5.02	4.16	3.80	3.45	16.62	13.50	12.13	11.41
66	6.90	5.08	4.21	3.84	3.49	16.88	13.70	12.32	11.59
67	6.90	5.14	4.26	3.89	3.54	17.13	13.91	12.50	11.76
68	6.90	5.20	4.31	3.94	3.58	17.39	14.12	12.69	11.94
69	6.90	5.27	4.37	3.98	3.62	17.64	14.33	12.87	12.11
70	6.90	5.33	4.42	4.03	3.66	17.90	14.53	13.06	12.29

Appendix B

Terminal dues discount from 70% of domestic postage

Weight step (oz)	70% domestic postage	Per kg and per item rates: Group 1	Group 2	Group 3	Group 4	Per kg rates: Group 1	Group 2	Group 3	Group 4
Inbound Letter Post Documents v. First Class Mail Letters									
1	$ 0.35	-60%	-28%	-13%	-10%	27%	41%	47%	50%
2	0.50	-33%	-6%	6%	9%	-3%	16%	25%	29%
3	0.64	-18%	5%	16%	19%	-19%	3%	13%	18%
3.5	0.79	-3%	18%	27%	29%	-13%	8%	17%	22%
Inbound Letter Post Documents v. First Class Mail Flats									
1	$ 0.70	20%	36%	43%	45%	63%	70%	73%	75%
2	0.85	22%	38%	45%	46%	40%	51%	56%	59%
3	0.99	23%	39%	46%	47%	23%	37%	44%	47%
4	1.14	24%	40%	46%	48%	10%	27%	35%	38%
5	1.29	25%	40%	47%	49%	1%	19%	28%	32%
6	1.44	26%	41%	47%	49%	-7%	13%	22%	27%
7	1.58	26%	41%	48%	49%	-13%	8%	17%	22%
8	1.73	27%	41%	48%	50%	-18%	4%	14%	19%
9	1.88	27%	42%	48%	50%	-23%	0%	10%	16%
10	2.02	27%	42%	48%	50%	-26%	-3%	8%	13%
11	2.17	27%	42%	49%	50%	-30%	-5%	5%	11%
12	2.32	28%	42%	49%	50%	-32%	-8%	3%	9%
13	2.46	28%	42%	49%	50%	-35%	-10%	2%	7%
Inbound Letter Post Small Packets v. First Class Mail Packages/Priority Mail (zone 1-2)									
1	$ 2.45	58%	65%	68%	71%	90%	92%	92%	93%
2	2.45	55%	63%	66%	69%	79%	83%	85%	86%
3	2.45	53%	61%	64%	67%	69%	75%	77%	79%
4	2.45	50%	59%	62%	66%	58%	66%	70%	71%
5	2.63	51%	59%	63%	66%	51%	60%	64%	67%
6	2.63	49%	57%	61%	65%	42%	53%	57%	60%
7	2.63	46%	55%	59%	63%	32%	45%	50%	53%
8	2.63	44%	53%	58%	61%	22%	37%	43%	46%
9	2.87	46%	56%	60%	63%	20%	35%	41%	45%
10	3.12	49%	57%	61%	65%	18%	33%	40%	44%
11	3.36	51%	59%	63%	66%	16%	32%	39%	43%
12	3.61	52%	60%	64%	67%	15%	31%	38%	42%
13	3.85	54%	62%	65%	68%	14%	30%	37%	41%
14	4.69	61%	67%	70%	73%	24%	38%	44%	48%
15	4.69	59%	66%	69%	72%	18%	34%	40%	44%
16	4.69	58%	65%	68%	71%	13%	29%	36%	40%
17	5.08	60%	67%	70%	72%	14%	30%	37%	41%
18	5.08	59%	66%	69%	72%	9%	26%	34%	38%
19	5.08	57%	65%	68%	71%	4%	22%	30%	34%
20	5.08	56%	64%	67%	70%	-1%	18%	26%	31%
21	5.08	55%	63%	66%	69%	-6%	14%	23%	27%
22	5.08	54%	62%	65%	68%	-11%	10%	19%	24%
23	5.08	53%	61%	64%	67%	-16%	6%	15%	20%
24	5.08	51%	60%	63%	67%	-21%	2%	12%	17%
25	5.08	50%	59%	62%	66%	-26%	-2%	8%	14%

Terminal dues discount from 70% of domestic postage

Weight step (oz)	70% domestic postage	Per kg and per item rates: Group 1	Group 2	Group 3	Group 4	Per kg rates: Group 1	Group 2	Group 3	Group 4
Inbound Letter Post Small Packets v. First Class Mail Packages/Priority Mail (zone 1-2)									
26	$ 5.08	49%	58%	61%	65%	-31%	-6%	4%	10%
27	5.08	48%	57%	60%	64%	-36%	-10%	1%	7%
28	5.08	46%	56%	60%	63%	-41%	-15%	-3%	3%
29	5.08	45%	55%	59%	62%	-46%	-19%	-7%	0%
30	5.08	44%	54%	58%	61%	-51%	-23%	-10%	-4%
31	5.08	43%	53%	57%	61%	-56%	-27%	-14%	-7%
32	5.08	42%	52%	56%	60%	-61%	-31%	-18%	-11%
33	5.53	45%	55%	59%	62%	-53%	-24%	-11%	-5%
34	5.53	44%	54%	58%	62%	-57%	-28%	-15%	-8%
35	5.53	43%	53%	57%	61%	-62%	-31%	-18%	-11%
36	5.53	42%	52%	56%	60%	-66%	-35%	-21%	-14%
37	5.53	41%	51%	55%	59%	-71%	-39%	-25%	-17%
38	5.53	40%	50%	54%	58%	-76%	-43%	-28%	-21%
39	5.53	38%	49%	53%	58%	-80%	-46%	-32%	-24%
40	5.53	37%	48%	53%	57%	-85%	-50%	-35%	-27%
41	5.53	36%	47%	52%	56%	-90%	-54%	-38%	-30%
42	5.53	35%	46%	51%	55%	-94%	-58%	-42%	-33%
43	5.53	34%	45%	50%	55%	-99%	-61%	-45%	-37%
44	5.53	33%	44%	49%	54%	-103%	-65%	-48%	-40%
45	5.53	32%	43%	48%	53%	-108%	-69%	-52%	-43%
46	5.53	31%	42%	48%	52%	-113%	-73%	-55%	-46%
47	5.53	29%	42%	47%	52%	-117%	-76%	-59%	-49%
48	5.53	28%	41%	46%	51%	-122%	-80%	-62%	-52%
49	5.95	32%	44%	49%	54%	-111%	-71%	-54%	-45%
50	5.95	31%	43%	48%	53%	-115%	-74%	-57%	-48%
51	5.95	30%	42%	47%	52%	-119%	-78%	-60%	-50%
52	5.95	29%	41%	46%	51%	-123%	-81%	-63%	-53%
53	5.95	28%	40%	46%	51%	-128%	-85%	-66%	-56%
54	5.95	27%	40%	45%	50%	-132%	-88%	-69%	-59%
55	5.95	26%	39%	44%	49%	-136%	-92%	-72%	-62%
56	5.95	25%	38%	43%	48%	-141%	-95%	-76%	-65%
57	5.95	24%	37%	43%	48%	-145%	-99%	-79%	-68%
58	5.95	23%	36%	42%	47%	-149%	-102%	-82%	-71%
59	5.95	22%	35%	41%	46%	-154%	-106%	-85%	-74%
60	5.95	21%	34%	40%	46%	-158%	-109%	-88%	-77%
61	5.95	20%	34%	39%	45%	-162%	-113%	-91%	-80%
62	5.95	19%	33%	39%	44%	-166%	-116%	-94%	-83%
63	5.95	18%	32%	38%	43%	-171%	-120%	-98%	-86%
64	5.95	17%	31%	37%	43%	-175%	-123%	-101%	-89%
65	6.90	27%	40%	45%	50%	-141%	-96%	-76%	-66%
66	6.90	26%	39%	44%	49%	-145%	-99%	-79%	-68%
67	6.90	25%	38%	44%	49%	-148%	-102%	-81%	-71%
68	6.90	25%	37%	43%	48%	-152%	-105%	-84%	-73%
69	6.90	24%	37%	42%	47%	-156%	-108%	-87%	-76%
70	6.90	23%	36%	42%	47%	-160%	-111%	-89%	-78%